



U.S. Department of Justice

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July 23, 2020

BY ECF AND E-MAIL

Hon. Andrew L. Carter
United States District Judge
Thurgood Marshall Federal Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Anthem, Inc.*, 20 Civ. 2593 (ALC)

Dear Judge Carter:

On July 16, 2020, defendant Anthem, Inc. filed a letter stating its intention to file a Rule 12(b)(6) motion to dismiss two of the Government's claims and a Rule 12(f) motion to strike certain allegations. *See* ECF No. 30. Previously, the parties filed letters concerning the briefing schedule for Anthem's anticipated motion to transfer venue. *See* ECF Nos. 28, 29. In light of Anthem's plan to move under Rule 12(b)(6) and Rule 12(f), and because no briefing schedule has been set, we write respectfully to propose the following *consolidated* briefing schedule for the three anticipated motions — *i*) Anthem to file its opening brief by August 21, 2020; *ii*) the Government to file its opposition brief by September 25, 2020; and *iii*) Anthem to file its reply brief by October 16, 2020.¹

Briefly, while Anthem favors separate briefing for its three anticipated motions, the Government believes that interests of efficiency and judicial economy favor consolidated briefing. Substantively, the Court will need to examine “the factual and legal context of [this] particular case” in deciding the motion to transfer venue. *See* 15 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURES § 3851 (3d ed. 2007); *see also* *Dwyer v. Gen. Motors Corp.*, 853 F. Supp. 690, 693-94 (S.D.N.Y. 1994) (assessing venue factors like “locus of operative facts” requires examining the “theories of [] liability”). Accordingly, briefing for the venue motion will inevitably overlap with the Rule 12 motions, making consolidated briefing more efficient than having two or three separate sets of briefs.

Procedurally, moreover, having a consolidated briefing schedule will allow the Court

¹ Anthem contacted us on July 17 to discuss the briefing schedule for its 12(b)(6) and 12(f) motions. We told Anthem that the Government *i*) believes there should be a single, consolidated schedule for the three motions, and *ii*) is open to accommodating Anthem on both timing and page limits. Anthem, in turn, proposed the dates above for its Rule 12(b)(6) and 12(f) motions, while insisting on a separate briefing schedule for its venue transfer motion.

To avoid multiple filings, we circulated a draft joint letter to set forth the parties' respective positions. Anthem, however, declined the invitation, stating instead that we should “go ahead with filing []our letter” and Anthem “will consider whether to submit a response.”

to decide the order in which to consider the arguments. While Anthem has suggested that separate rounds of briefing – despite entailing two or three times the number of briefs – is more efficient because if the Court were to grant its transfer motion, there would not be a need to consider its Rule 12 motions, this ignores the fact that, with consolidated briefing, the Court could still review the venue transfer arguments first before proceeding to the Rule 12(b)(6) and 12(f) arguments. If the Court were to decide that the case should be transferred, it could do so without deciding the Rule 12 motions. If, however, the Court were to decide that transfer is wholly unwarranted — which, as the Government has explained, it is, *see* ECF No. 17, the Court could then move directly to the Rule 12 motions. That, in turn, will ensure that this case moves forward efficiently and without delay.

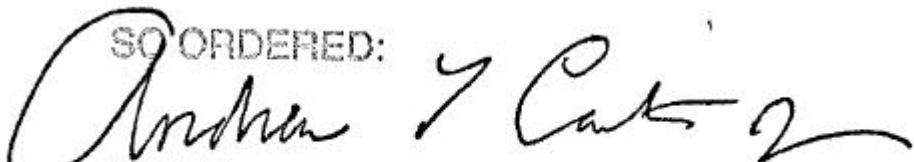
We thank the Court for considering this letter and the proposed schedule.

Respectfully submitted,

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This request is DENIED as moot.

SO ORDERED:

HON. ANDREW L. CARTER, JR.
UNITED STATES DISTRICT JUDGE

10/1/20